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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

Mister Softee, Inc. And
Mister Softee of Queens, Inc.

Plaintiff,

-against-

Gus Anthony Toufos

Defendants.

13 CV 4829 (JMA)

DEFENDANT GUS TOUFO S

PLAINTIFF'S

AFFIDAVIT/AFFIRMATION

IN OPPOSITION TO

DEFENDANT'S MOTION FOR CONTEMPT
PLAINTIFF'S

STATE OF NEW YORK)

SS.

COUNTY OF Queens

Gus A Toufos, affirms the following
under penalty of perjury:

or

being duly sworn, deposes and says:

DEFENDANT

1. I am the ~~plaintiff~~ in this action, and I respectfully submit
this affidavit/affirmation in opposition to the motion dated

April 28, 2015, made by Mister Softee, Inc.

2. I have personal knowledge of facts which bear on this
motion.

3. The motion should be denied because

see next page

(You may use additional 8 1/2 x 11 paper if needed)

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EDNY PRO SE OFFICE

This motion should be denied for various reasons below.

Since I was not served properly, I could not comply with the court's order on January 26, 2015. I did not receive any court order documents.

The document states that I am operating two infringing ice cream trucks. This statement is false. The trucks that I operate do not have Mister Softee's federally registered trademarks and trade dress. Furthermore, the document states that Exhibit "B" show photographs of myself serving ice cream and frozen confections on Long Island, New York on April 4, 2015. This photograph is very misleading since these pictures were not taken in 2015 in Long Island. The pictures taken include Mister Softee trucks that do not belong to me.

Since the document was presented to the court, I have been subjected to harassment and frequent threats. One individual told me "Mister Softee owns the streets" and forbade me to operate. I am constantly being followed around. This is unfair as I am a ~~simple~~ law abiding citizen trying to earn a living and provide for my two young children. Furthermore, I spoke to Craig Zoly, Mister Softee Eastern NY Office, in an attempt to resolve this matter. He told me that if I begin to park my trucks at 215-04 Hempstead Ave, Queens Village NY, he would dismiss all claims made in this case. Moreover, I made several attempts to ~~resolve this matter~~ ~~through the law offices of Frank~~ →

A. Heize (May 26, 2013 and June 1, 2013) but he simply stated he would call me back but never did.

- I have proof that Mister Softee approved a lease agreement to pay off a truck. Additionally, I have copies of disbursements made to Mister Softee by me, Gus Anthony Toufos.

Most disturbingly, false claims have been made of me by Mister Softee in an attempt to harm my reputation. In a recent article published in the New York Post, false claims were made stating I was operating a Mister Softee truck with the iconic brand's decals. These decals were provided to me by Mister Softee themselves. Additionally, the ice cream I was serving was not a "Cheap knock-off" because it was purchased from a Mister Softee Commissary. Another article referred to me as a "menace." I take a lot of pride in serving my customers with the best ice cream. In fact, I have active Department of Health & Hygiene & Consumer Affairs certificates. These certificates require me to abide by stringent rules. Furthermore, I have undergone New York City inspections. I can provide proof of all certificates & inspections.

This motion should be denied for various reasons below.

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Finally, in 2013, I underwent major open heart surgery. This surgery required a lengthy recovery period along with frequent hospital and physician visits.

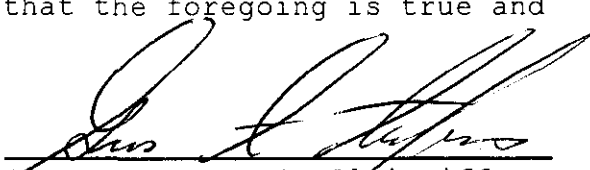
Since I have been unable to resolve this matter, I am requesting a conference ASAP to resolve this issue.

In view of the foregoing, it is respectfully submitted that the motion should be denied.

I declare under penalty of perjury that the foregoing is true and correct.

Dated:

June, 2, 2015


Signature, Pro Se Plaintiff

Gus Anthony Toufos
Name

21-02 123rd St.
Address

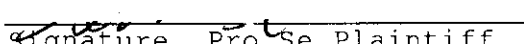
College Point, NY 11356

OR:

Sworn to me before this

_____ day of _____, 20____

Notary Public


Signature, Pro Se Plaintiff

Name

Address

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

U.S. DISTRICT COURT
EASTERN DISTRICT
OF NEW YORK

X

Mister Softee, Inc. And
Mister Softee of Queens, Inc.
Plaintiff,

Affirmation of Service

-against-

13 cv 4829 (JMA)

Gus Anthony Toutos

Defendants.

X

I, Gus Anthony Toutos, declare under penalty of perjury that I
have served a copy of the attached affirmation/affidavit in
opposition to defendant's motion upon: Eric Lawrence Adler
whose address is 45 Main Street, Suite 500
Brooklyn, NY 11201

Dated: June 2, 2015
New York

Gus A. Toutos
Signature

21-02 123rd St
Address

College Point, NY 11356
City, State & Zip code

917-584-6654
Telephone

And,

Frank H. Beino
21 South 21st Street
Philadelphia, PA 19103